

SENATE BILL 2194
By Bryson

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 9; Title 39; Title 53; Title 56; Title 57; Title 67;
Title 68 and Title 71, relative to medical care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-5-2601, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1)

(A) A person, including an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, or statute governing TennCare or its successor program:

(i) Medical assistance benefits or any assistance provided pursuant to any rule, regulation, procedure, or statute governing TennCare or its successor program to which such person is not entitled, or of a greater value than that to which such person is authorized; or

(ii) Benefits by knowingly making a willfully false statement, or concealing a material fact relating to personal or household income, thereby resulting in the assessment of a lower monthly

premium than the person would be required to pay if not for the false statement or concealment of a material fact.

(B) An offense under subdivision (a)(1) constitutes a Class E felony.

(2)

(A) A person, firm, corporation, partnership or any other entity, including a vendor, other than an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person or entity to obtain, by means of a willfully false statement, report, representation, claim or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, procedure, or statute governing TennCare or its successor program, medical assistance payments pursuant to any rule, regulation, procedure, or statute governing TennCare or its successor program to which such person or entity is not entitled, or of a greater value than that to which such person or entity is authorized. For purposes of this subsection (a), "attempts to obtain" includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare or its successor program, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under subdivision (a)(2) constitutes a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any

other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(3)

(A) A person, firm, corporation, partnership or any other entity commits an offense when providing a willfully false statement regarding another's medical condition or eligibility for insurance, to aid or abet another in obtaining or attempting to obtain medical assistance payments, medical assistance benefits or any assistance provided under any rule, regulation, procedure, or statute governing TennCare or its successor program to which the person is not entitled or to a greater value than that to which such person is authorized. For purposes of this subsection (a), "attempting to obtain" includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare or its successor program, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under subdivision (a)(3) constitutes a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(b) In addition to any other penalties provided for any person, firm, corporation, partnership or other entity under subsection (a), the court shall also:

(1)

(A) Order restitution to TennCare or its successor program in the greater of the total amount of all medical assistance payments made to all providers, or the total amount of all payments to a managed care entity, related to the services underlying the offense; and

(B) Report the person or entity to the appropriate professional licensure board or the department of commerce and insurance for disciplinary action.

(2) In addition to any other penalties provided under this section, the court may also, to the full extent permitted by federal law and the TennCare waiver as interpreted by the CMS, order any such person or entity disqualified from participation in the medical assistance program; such disqualification may also apply to any person who is convicted of a criminal offense involving the selling of prescription drugs obtained through TennCare or its successor program. Any person or entity disqualified from participation in the medical assistance program shall make full restitution in the total amount of the medical assistance or underpayment which forms the basis for the conviction before such person or entity can re-enroll in TennCare or its successor program.

(3) A subsequent denial of eligibility or denial of a claim for payment does not, of itself, establish proof of falsity of a statement, representation, report or claim for payment under subsection (a).

(c) Nothing in this section shall be construed as prohibiting a person or entity violating the provisions of this section from being prosecuted for theft of property or services under title 39, part 14.

(d) In addition to any other remedy available, including those provided in this section, the state may recover from any person or such person's estate, or from a firm, corporation, partnership or other entity, including a vendor, the amount of medical assistance benefits or payments improperly paid as a result of fraudulent means or actions not authorized by any rule, regulation, procedure, or statute governing TennCare or its successor program.

(e) Notwithstanding the provisions of any law to the contrary, prosecutions for violations of this section shall be commenced within seven (7) years following the commission of the offense.

SECTION 2. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2005, the public welfare requiring it.